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This is the original signature copy of Comments
filed by Aerial Communications, Inc. in the federal-
state joint board proceeding, CC Docket No. 96-45,
on December 19, 1996.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Federal-State Joint Board on) CC Docket No. 96-45
Universal Service)

To: The Commission

COMMENTS OF
AERIAL COMMUNICATIONS, INC.

Aerial Communications, Inc.¹ responds to the Common Carrier Bureau Public Notice [DA 96-1891] released November 18, 1996, in the above-captioned proceeding.

INTRODUCTION

The universal service program is intended by Congress to be implemented in a manner not inconsistent with fundamental statutory goals "...to promote competition and reduced regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."² (Emphasis supplied.) The Commission is also required to adopt a "...specific, predictable and sufficient Federal...mechanism" for the

¹ Aerial Communications, Inc., a majority-owned subsidiary of Telephone and Data Systems, Inc., holds licenses for six broadband Personal Communications Services MTA markets including Minneapolis-St. Paul, Tampa-St. Petersburg-Orlando, Houston, Pittsburgh, Kansas City and Columbus and is in the process of implementing competitive wireless services in these markets.

² Telecommunications Act of 1996 (P.L. 104-104) ("1996 Act"), Preamble.

assessment of contributions to the federal universal service fund as required in Section 254(b)(5) of the Communications Act of 1934³.

The foregoing statutory mandate can and should be met by adopting a universal service plan that has the flexibility to address the current revenue needs to support universal service, to encourage the development of hardware and software innovations that could well modify universal service as we know it, to promote competition that will foster rate reductions which benefit all consumers and to do all this in an administratively efficient, deregulatory manner.

Aerial Communications supports the Comments being filed concurrently by The Personal Communications Industry Association ("PCIA") and the separate Comments being filed by the Broadband PCS Alliance. Aerial Communications' comments are intended to supplement the foregoing pleadings with respect to the critical issue of appropriate policies for assessing and calculating contributions from "providers of interstate telecommunications." Considering the very substantial revenue requirements due from all interstate telecommunications providers under the various universal service proposals, the contributions required from individual providers, particularly those about to launch new competitive businesses, could have a materially adverse impact on the scope, pace and price competitiveness of their service offerings. However universal service is funded, the financial burden should be spread evenly and fairly among all types of providers: incumbents and new entrants, wireless and terrestrial, metropolitan and rural providers. Aerial Communications proposes adoption of per-line charges as an assessment mechanism which is simple, explicit, fair and predictable. The assessment mechanism should not be based on revenue. It should be based on the number of lines, dialable numbers or such other easily quantifiable and easily understood basis. Net revenue based assessments would require burdensome

³ Title 47, USCA, §254.

computations, and would lead to inconsistencies in interpretations of assessment calculations between providers. Per-line or dialable numbers would be much easier for the providers to manage and the regulators to monitor.

DISCUSSION

1. Contributions Should be Assessed in a Manner That Encourages Competition, Innovation and Reduction of End User Prices.

Contribution assessments should be calculated so that incumbent LECs pay based on the number of subscriber lines (or equivalence) in the areas where each such LEC is a universal service provider. The assessments for all other providers should be based on the number of lines by which such other providers are connected to the PSTN.⁴

This proposal is intended to assure that LEC assessments for universal service are directly related financially and otherwise to the shared costs of providing universal service. An explicit contribution mechanism is needed to demonstrate both the amount received by each LEC for providing universal service and the corresponding contribution of each such LEC toward the shared costs of universal service.

For providers (including the competitive out-of-region service offerings of LECs), the fair and competitively equivalent assessments for providers who do not have universal service responsibilities should be based on the number of lines to which they are connected. This approach is fair because of the limited scope of their service responsibilities in terms of universal service. It also gives this class of providers maximum economic incentives to reduce production costs through efficient PSTN utilization, to make available technologically advanced services and facilities and to reduce end-user pricing toward marginal costs.

⁴ To the extent incumbent LECs provide out-of-region services, their contributions should be calculated on the same basis as all other providers.

Adopting a contribution mechanism that encourages competition as proposed here is fully justified because it meets the pro-competitive goals of the 1996 Act and creates incentives for universal service to be provided on a cost-effective basis now and in the future. This is true for existing services because the benefits from competition mean increased availability/coverage of services, reductions in prices, marketing innovations, technological advancements and competitive pressures on incumbent LECs in all of these areas. For new and innovative service offerings, Aerial Communications expects that these benefits will result in new marketing and service concepts, such as access to the Internet data bases and interactive services, which may emerge as the next generation of universal service. In assessing relative contribution levels, the federal contribution mechanism should take account of the extraordinary contribution which competitive service providers will make to the attainment of overall universal service goals now and in the future.

2. The Proposed Per-Line Basis for Contribution Assessments is Administratively Efficient, Predictable, and Fair.

The Commission is required by statute to implement a contribution mechanism that is "specific, predictable and sufficient."⁵ These requirements also must be met in a manner which reflects the deregulatory objectives of the 1996 Act.

The Commission should adopt a fixed contribution amount per-line,⁶ consistent with the calculations of "lines" as described in the preceding section of these Comments. This approach avoids a host of potential problems involving interpretation of "standardized" definitions of exempt information services and enhanced services, the

⁵ Section 254(b)(5) of the 1934 Act.

⁶ This amount could be adjusted periodically to assure full funding of federal universal service commitments.

treatment of access and other charges paid to other carriers, the disaggregation of bundled equipment and other non-telecommunications charges, credits for discounted or “free” service, among many other valid exemptions. It also avoids the need for intrusive audits of carriers/providers who are not subject to detailed Commission and state PUC accounting or financial reporting requirements. It also removes possible incentives to “game” the contribution mechanism in other ways.

Also information regarding the number of subscriber lines and equivalents served by incumbent LECs and competitive LECs and other providers is readily available. The advantages in terms of time, cost and credibility of this existing record keeping to support assessment on this basis are clear. It achieves a predictable and equitable result with a minimum of regulatory intervention.

3. Alternatively, if a Revenues-Based Contribution Mechanisms are Adopted, Commission Should Clarify the Specific Revenue Components to be Included.

Aerial Communications strongly objects to use of revenues-based contribution mechanisms for the reasons described in the preceding section. Notwithstanding this objection, if the Commission concludes that revenues should be adopted as its contribution mechanism, such revenues should be based only on revenues...net of access charges paid to other carriers.

As discussed in the Joint Board Recommendation (§ 790), revenues for information and enhanced services should not be counted for assessment purposes. Similarly, charges for consumer devices such as handsets or other accessories should be excluded as equipment sales.

Competitive neutrality also requires that companies should be permitted to set off appropriate amounts for bad debt and fraud so that they are not disadvantaged. This is fair because differences in service offerings, technologies employed, and marketing strategies of competitive providers will cause significant differences in the level of bad

debt and fraud experienced by each. By allowing deductions from revenues for bad debt and fraud, the Commission will be giving providers that develop innovative technologies, services and marketing concepts a fair chance to implement their plans without the added risk of being required to pay contribution assessments on revenues that will never be received.

CONCLUSION

Aerial Communications has proposed contribution mechanisms that will meet statutory goals for federal universal service funding and preserve the fundamental pro-competitive goals of the 1996 Act. The important point in this proceeding is that universal service is not a static concept. The pro-competitive goals of the 1996 Act were intended by the framers of the 1996 Act to create the ingredients of a new generation of "universal service." Technological advances in services and facilities are expected to lead to the redefinition of both the content and technologies of future versions of what we now know as universal service and to foster important new cost-efficiencies in established services.

Respectfully submitted,

AERIAL COMMUNICATIONS, INC.

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The Commission can influence the pace and direction of universal service capabilities by giving competitive service providers a fair chance to create the marketing, technology, productivity, coverage, and pricing breakthroughs that will benefit all consumers. Assessments on a per-line basis as proposed here are a reasonable approach that reflects an appropriate division of payment obligations and the unique contribution which non-LECs, including CMRS providers, will make as competition in local markets is permitted to emerge.

Respectfully submitted,

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